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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91239589
Party	Defendant Bowmaker's Whiskey Company
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Attachments	Applicants Opposition To Opposers Request for Ext of Discovery 12-18-18.pdf(39372 bytes )

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

MAKER'S MARK DISTILLERY, INC.,	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No. 91239589
	)	
	)	
	)	Serial No. 87/383,989
BOWMAKER'S WHISKEY COMPANY,	)	Mark: BOWMAKER'S WHISKEY
	)	
Applicant.	)	

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APPLICANT BOWMAKER'S WHISKEY COMPANY'S  
OPPOSITION TO OPPOSER MAKER'S MARK DISTILLERY,  
INC.'S REQUEST FOR EXTENSION OF DISCOVERY PERIOD

Applicant Bowmaker's Whiskey Company ("Applicant") hereby opposes opposer Maker's Mark Distillery, Inc.'s ("Opposer") Motion for Extension of the Discovery Period and the related dates in this opposition. Specifically, as set forth hereafter, Applicant has agreed to numerous extensions of time at the request of Opposer to try and settle this opposition. In each instance, Opposer has not been expeditious in pursuing the settlement process, and it has become apparent to Applicant that Opposer has no intent on any reasonable settlement absent complete capitulation by Applicant. Opposer has been fully aware of the discovery schedule set in this case. The grounds for this opposition are without merit and frivolous and Applicant respectfully wishes to pursue this opposition to its earliest

possible conclusion to avoid further damage to Applicant's business.

The undisputed facts in this opposition are as follows:

(1) Applicant filed the present application on March 24, 2017 for the trademark BOWMAKER'S WHISKEY for distilled spirits, whiskey and bourbon ("the Application");

(2) The Application was published for opposition on August 22, 2017;

(3) Opposer requested an extension of time to oppose on September 1, 2017 and receiving a ninety (90) day extension of time;

(4) Opposer, through an executive, sent a letter to Applicant dated October 30, 2017, requesting that Applicant withdraw the present Application and demanding a response from Applicant by November 13, 2017;

(5) Applicant, through counsel, wrote to Opposer by letter dated November 14, 2017 advising that Applicant was reviewing the matter and would respond to Opposer's letter;

(6) Opposer filed a consented to sixty (60) day request for extension of time to file an opposition on December 14, 2017 in order that the parties could discuss settlement (counsel for Applicant was out of the office from approximately December 12, 2017 through December 22, 2017 because of a family emergency);

(7) Applicant responded in detail to Opposer's request

that Applicant withdraw the Application by letter dated January 10, 2018 and refused to do so;

(8) Opposer, through an executive at Opposer, wrote to Applicant's executive on February 14, 2018 again proposing that Applicant withdraw the Application, despite prior discussions among the parties' counsel;

(9) Opposer filed the Notice of Opposition on February 20, 2018 and concurrently requested that Applicant agree to a ninety (90) suspension to continue settlement discussions. Applicant agreed to a sixty (60) day suspension which was filed by Opposer on February 22, 2018;

(10) Applicant, through counsel, wrote to opposer's counsel by letter dated February 26, 2018 responding to Opposer's letter dated February 14, 2018;

(11) Not having heard from Opposer, Applicant wrote to counsel for Opposer by email of March 20, 2018 requesting the status of Opposer's response to Applicant's February 26, 2018 letter;

(12) Still not having heard from Opposer, Applicant by email dated April 14, 2018 inquired of Opposer's review of, and response to Applicant's February 26, 2018 letter;

(13) During this six month time period purportedly to consider settlement, Applicant was considering its plans for moving forward with the labeling for its BOWMAKER'S WHISKEY products, although, this decision making process was made

difficult in view of this opposition and Opposer's failure to respond to Applicant's correspondence, including based on Opposer's initial demand that Applicant respond within fourteen (14) days of its first letter of October 30, 2017;<sup>1</sup>

(14) Still not having heard from Opposer, Applicant inquired by April 14, 2018 email of Opposer's review of Applicant's February 26, 2018 letter and Opposer advised by email of April 16, 2018 that they had changed counsel;

(15) Still not having heard from Opposer for more than two months, counsel for Applicant wrote to Opposer's new counsel by email dated May 9, 2018 inquiring when Applicant could expect a response to its February 26, 2018 letter concerning settlement;

(16) Opposer by email dated May 9, 2018 advised that Opposer's position had not changed and advised that Opposer looked forward to receiving Applicant's answer by the May 31, 2018 due date. This was completely contrary to the parties' prior discussions and apparently a stalling and/or a bullying tactic on the part of Opposer;

(17) Applicant filed its Answer to the Notice of Opposition on May 30, 2018;

(18) Opposer and Applicant held a discovery conference on June 27, 2018. The parties discussed, among other things, settlement with Opposer suggesting possible terms for settlement;

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Apparently "time is of the essence" only when it applies to Opposer.

(19) Based on the discovery conference and settlement discussions, Applicant responded to Opposer's proposal by email dated July 6, 2018 substantially agreeing to Opposer's proposal;

(20) On July 27, 2018, Opposer advised that it was considering settlement and requested a delay in serving initial disclosures by two weeks. By email on this same date, Applicant advised that it was not interested in further extensions of time and that Applicant had previously agreed to the sixty (60) day suspension request of Opposer for the purposes of considering settlement and nothing was ever said or done. However, Applicant agreed to an extension for serving initial disclosures to July 30, 2018;

(21) The parties served initial disclosures on July 30, 2018, and Applicant served discovery on Opposer on July 30, 2018 with Opposer's responses being due August 29, 2018;

(22) Applicant and Opposer had a telephone conference discussing settlement on August 22, 2018 with Applicant reiterating its position set forth on July 6, 2018;

(23) At Opposer's request, Applicant agreed by email dated August 22, 2018 to a two week extension of time for Opposer to respond to Applicant's discovery;

(24) Applicant inquired on August 20, 2018 of the status of the settlement proposal which was to be forwarded by Opposer. Opposer advised that they were working on a proposed settlement agreement and requested a further seven (7) day

extension of time to respond to Applicant's discovery to which Applicant agreed based on the alleged "good faith" settlement discussions;

(25) Opposer provided a proposed settlement agreement to Applicant on September 5, 2018, although the proposed settlement agreement looked nothing like what the parties had been discussing;

(26) Applicant advised by email on September 5, 2018 that the settlement agreement was not acceptable and agreed to an extension of Opposer's discovery responses to September 12, 2018;

(27) Applicant provided a redline to the settlement agreement to Opposer a day later by email dated September 6, 2018;

(28) The parties discussed settlement by telephone on September 12, 2018;

(29) Opposer responded to Applicant's discovery on September 19, 2018. Opposer objected to substantially all of Applicant's discovery;

(30) Applicant inquired on the status of settlement by email dated October 3, 2018 and advised that Applicant otherwise intended to move the opposition forward;

(31) Opposer provided a further proposed settlement agreement on October 16, 2018. This version still included the provisions previously rejected by Applicant;

(32) Based on the impasse in settlement, Applicant has proceeded with this case; and

(33) Opposer served discovery on Applicant on November 26, 2018.

As seen above, this opposition has dragged on long enough and the settlement discussions have not been fruitful or conducted with any dispatch. Applicant's business is being hurt by a delay in the resolution of this matter. Further, Applicant respectfully submits that this opposition is without merit and frivolous as there is no likelihood of confusion between Applicant's trademark BOWMAKER'S WHISKEY and Opposer's trademark MAKER'S MARK.

For the foregoing reasons, Applicant respectfully requests that the Board deny Opposer's request for extension of discovery and all other dates.

Respectfully submitted,

BOWMAKER'S WHISKEY COMPANY

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December 17, 2018

Attorneys for Applicant



CERTIFICATE OF SERVICE

It is hereby certified that on this 17th day of  
December, 2018 a true copy of the foregoing paper entitled-

APPLICANT BOWMAKER'S WHISKEY COMPANY'S  
OPPOSITION TO OPPOSER MAKER'S MARK DISTILLERY,  
INC.'S REQUEST FOR EXTENSION OF DISCOVERY PERIOD

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